

DIVISION IV

CACR03-1320

RANDY McBRIDE

January 17, 2007

APPELLANT

V.

APPEAL FROM THE JEFFERSON  
COUNTY CIRCUIT COURT  
[NO. CR-99-41-2, CR-99-903-2]

STATE OF ARKANSAS

HON. H. A. TAYLOR, JR.  
CIRCUIT JUDGE

APPELLEE

AFFIRMED;  
MOTION GRANTED

JOSEPHINE LINKER HART, Judge

Randy McBride's appeal is before us for the third time after we ordered rebriefing and elected to replace McBride's appellate counsel after he failed to satisfactorily perform his duties when we ordered rebriefing. We now decide this case.

On June 19, 2000, McBride pleaded guilty in Jefferson County Circuit Court to two counts of theft by receiving. He was fined \$750, assessed \$300 in court costs, and placed on probation for five years. His probation was conditioned, in pertinent part, on his paying fees and fines, reporting regularly to his probation officer, not abusing a controlled substance, and not engaging in any criminal activity. On September 20, 2000, the State petitioned to revoke McBride's probation, asserting that he had failed to report. Pursuant to a hearing on that petition, the trial court found that McBride had indeed failed to report and make payments on his fees, but continued McBride on probation.

On November 18, 2002, the State filed a “supplemental” petition to revoke, alleging that McBride had failed to “obey state and federal laws.” At the revocation hearing, there was evidence presented that McBride had been charged with two counts of aggravated robbery and that he had failed to report or pay fees since the last hearing. On July 23, 2003, McBride’s probation was revoked, and he was sentenced to ten years in the Arkansas Department of Correction.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, McBride’s appellate counsel has filed a motion to withdraw on grounds that the appeal is without merit. The clerk of this court furnished McBride with a copy of his counsel’s brief and a notification that he has a right to file a pro se brief within thirty days. McBride has filed pro se points, and the State has filed a responsive brief.

McBride’s appellate counsel’s motion was accompanied by an abstract and brief referring to everything in the record that might arguably support an appeal. All objections were adequately discussed by McBride’s appellate counsel, and our review of the record has uncovered no procedural irregularities that would support a non-frivolous argument on appeal. Regarding the merits of McBride’s probation revocation, McBride conceded in his own testimony that he had willfully violated the conditions of his probation. We hold that there is a substantial basis for affirming the revocation and that any argument based on the merits of the revocation would be wholly frivolous.

McBride's pro se points are also unavailing. He asserts an ineffective assistance of counsel claim, however, it was not timely raised to the trial court and therefore cannot be considered for the first time on appeal. *Ratchford v. State*, 357 Ark. 27, 159 S.W.3d 304 (2004). The other points he lists cannot support a non-frivolous appeal because the allegations of error were either expressly waived by his trial counsel or simply cannot support a non-frivolous argument on appeal.

From our review of the record and the briefs presented to us, we find that there was compliance with Rule 4-3(j) and that the appeal is without merit. Accordingly, we affirm the revocation of McBride's probation and grant counsel's motion to withdraw.

Affirmed.

Motion to withdraw granted.

BIRD and GRIFFEN, JJ., agree.